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10/600,154

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EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT

PAPER NUMBER

2145

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/600,154

Applicant(s)

DICKERSON ET AL.

Examiner

Jeffrey R. Swearingen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. This case has been assigned to a new examiner.

#### *Response to Arguments*

2. Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

#### *Claim Rejections - 35 USC § 101*

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-9, 12-14, 28-36 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. A system "configured to" perform a function does not necessarily perform said function, and therefore can be construed as being "inoperative". The claims in question are "configured to" perform transmission, receipt, and processing of messages. The claims in question never perform the functions; the systems are merely in a configuration that could allow these functions to be performed. If no function is performed – regardless of the configuration, then there is no tangible result.

#### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-3, 5-12, 15-17, 19-26, 28-30, 32-34, and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Vange et al. (US 7,155,539 B2).
7. In regard to claim 1, Vange disclosed:

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*a first client system configured to transmit a message packet containing a priority; and  
a second client system configured to receive the message packet transmitted from the  
first client system and process the message packet in an order relative to other message packets  
based on the priority. Column 11, line 65 – column 12, line 5*

8. In regard to claim 2, Vange disclosed:

*the first client system is configured to transmit the message packet to the second client  
system according to a transport protocol. Column 10, lines 36-56*

9. In regard to claim 3, Vange disclosed:

*the transport protocol is TCP/IP. Column 10, lines 36-56*

10. In regard to claim 5, Vange disclosed:

*the message packet is formatted according to an SGML standard. Column 19, lines 50-  
61*

11. In regard to claim 6, Vange disclosed:

*the SGML standard is XML. Column 19, lines 50-61*

12. In regard to claim 7, Vange disclosed:

*the message packet comprises text data. Column 5, lines 38-49. Packets transmitted by  
NNTP, MIME, POP, or SMTP would comprise at least a portion of text data.*

13. In regard to claim 8, Vange disclosed:

*the message packet comprises a virtual object. Column 19, lines 24-30*

14. In regard to claim 9, Vange disclosed:

*a first message server coupling the first client system to the second client system, the  
first message server providing a first communication path between the first client system and the  
second client system. Column 4, lines 26-57*

15. In regard to claim 10, Vange disclosed:

*a log server coupled to the first message server, the log server configured to store log  
data for the message packet. Column 7, line 63 – column 8, line 6. The prioritization data from  
the packets is stored by the front-end manager.*

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16. In regard to claim 11, Vange disclosed:

*a diagnostics server coupled to the first message server, the diagnostics server configured to store log data for the message packet and to map error codes contained in message packets to corrective actions. Column 7, line 63 – column 8, line 6. The prioritization data from the packets is stored by the front-end manager.*

17. In regard to claim 12, Vange disclosed:

*a second message server coupled to the first client system and the second client system, the second message server providing a second communication path between the first client system and the second client system; and*

*a load balancer coupling the first client system to both the first message server and the second message server, the load balancer further coupling the second client system to both the first message server and the second message server. Column 16, lines 16-35.*

18. Claim 15 is substantially the same as claim 1.

19. Claim 16 is substantially the same as claim 2.

20. Claim 17 is substantially the same as claim 3.

21. Claim 19 is substantially the same as claim 5.

22. Claim 20 is substantially the same as claim 6.

23. Claim 21 is substantially the same as claim 7.

24. Claim 22 is substantially the same as claim 8.

25. Claim 23 is substantially the same as claim 9.

26. Claim 24 is substantially the same as claim 12.

27. In regard to claim 25, Vange disclosed:

*encrypting a message to generate an encrypted message and including the encrypted message in the message packet. Column 11, lines 36-50.*

28. In regard to claim 26, Vange disclosed:

*decrypting the encrypted message in the message packet. Column 16, lines 55-59.*

29. Claim 28 is substantially the same as claim 1.

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- 30. Claim 29 is substantially the same as claims 1-2.
- 31. Claim 30 is substantially the same as claim 3.
- 32. Claim 32 is substantially the same as claim 1.
- 33. Claim 33 is substantially the same as claims 1-2.
- 34. Claim 34 is substantially the same as claim 3.
- 35. In regard to claim 36, Vange disclosed:

*the second client system comprises a priority queue configured for processing the message packet in the order based on the priority. Column 17, lines 30-41.*

***Claim Rejections - 35 USC § 103***

- 36. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 37. Claims 13-14 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vange in view of Schulze (US 6,671,570).
- 38. In regard to claims 13-14 and 27, Vange failed to disclose error detection in a semiconductor system. Vange did disclose the transmission of data based upon prioritization of various packets. Schulze disclosed in column 7, lines 10-61 a monitoring system for a semiconductor fabrication tool. The tools would trigger error or alarm messages. The messages would be published to a system bus, and then used with a networked operating system for automated monitoring of machine shop tools. It would have been obvious to one of ordinary skill in the art at the time of the invention that Vange could be used with a networked system such as Schulze to route the error messages to the administrator controller in a timely and efficient manner.
- 39. Claims 4, 18, 31, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vange in view of DiBiasio et al. (US 7,225,271)

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40. In regard to claims 4, 18, 31, and 35, Vange taught transmission of packets using TCP/IP based on traffic scheduling and flows, which necessarily deal with priorities. Vange failed to disclose the use of NETBEUI as a transport protocol. However, DiBiasio showed that NETBEUI was an acceptable replacement communications protocol for TCP/IP. See DiBiasio, column 6, lines 8-24. NetBEUI is known to one of ordinary skill in the art as a communication extension of NetBIOS, commonly implemented on Windows workstations. Vange disclosed the use of a Windows NT network. Therefore it would have been obvious to one of ordinary skill in the art that Vange was able to use other Windows communications protocols such as NETBEUI for flexibility of design.

### ***Conclusion***

41. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Stark et al.

US 7,177,909 B2

42. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jason Cardone  
Supervisory Patent Examiner  
Art Unit 2145

JRS